

“An Examination of the District of Columbia Government’s Utilization of Emergency Preparedness Funding”

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1350 Pennsylvania Avenue, NW Washington, D.C. 20004
COMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON THE JUDICIARY
COMMITTEE ON PUBLIC SERVICES

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Chairpersons Orange, Patterson and Catania: Thank you for this hearing and for the opportunity to testify before you today.

Summary: Our testimony today is that District residents, workers and federal officials are in grave danger from potential terrorist attacks on the massive, accessible and slow-moving ultrahazardous cargoes which continue to traverse the District, a designated High Threat Target City, by rail and highway. Federal officials say they have intelligence indicating that terrorists are intending to use such explosive and toxic gas cargoes in similar ways as they used jetliners in the 9/11 attacks. An Al Qaeda operative in Columbus Ohio was reportedly specifically tasked to derail a train in the District.

Neither the District nor the federal government, however, has acted to reduce the risks posed by these cargoes, which the U.S. Department of Transportation has characterized as potential Weapons of Mass Destruction. The most sensible solution would be re-routing these cargoes to routes through non-Target Cities, which New York City has done for 20 years. Its safety permit and truck routing regulations, in its Fire Code Chapter 40, was upheld in federal court in 1982 as a permissible burden on commerce because of the huge benefit to public safety.

We will show that alternative routes are available around the District, and we urge the Council to enact legislation establishing a permit, fee and re-routing system. Similar to the District’s action to take the chlorine gas tank cars out of the Blue Plains sewage plant, re-routing of the most dangerous cargoes will eliminate a glaringly attractive set of targets for terrorism in the District. We will be candid in our assessment of the risks, and of some aspects of the District’s lack of preparedness, since it would be foolhardy to assume that the potential terrorists

have not had access to the same information, and the same calculations of potential catastrophic impacts, as we have had.

1. Having just observed the two-year anniversary of the September 11, 2001 attacks on New York City and Washington, D.C., the District and other major cities in the United States fear with good reason that they are likely to be targeted for continued terrorism. For example, Secretary Tom Ridge of the U.S. Department of Homeland Security in 2003 designated seven cities, including the Nation's Capital, as High Threat Target Cities for continued terrorism and gave them a total of \$100 million to beef up security and preparedness. Many other jurisdictions also worry about their attractiveness as major targets. But the District is uniquely rich in "trophy buildings and national institutions".

Many District and federal officials are keenly aware of the attractive terrorism targets posed by quantities of hazardous materials in facilities, in storage and in transport. FBI Special Agent Troy Morgan was quoted recently: "[It's] far easier to attack a railcar full of toxic industrial chemicals than it is to compromise the security of a military base and obtain [chemical warfare] materials." But protective action by government is non-existent. For example, in the District the federal General Services Administration building security task force reported no action: "We asked CSX if they could re-route but they said no, the volume was too high."

The District of Columbia's hurried action after the 9/11 attacks, in changing its Blue Plains sewage plant from chlorine gas to bleach, was an entirely appropriate "hardening of targets" in a preventive mode. In one stroke DC got rid of the 7-10 huge chlorine gas tank cars at the site, each of which if released could produce a toxic cloud 40 miles long and 10 miles wide over the Nation's Capital (according to the Chlorine Institute here in DC). This belated but commendable action certainly removed a serious terrorist risk for emergency responders as well as for citizens and public officials, and encouraged other cities to follow suit.

3. But dangerous through cargoes, with no origin nor destination point locally, are still unnecessarily being brought daily into the District. The most dangerous toxic and explosives cargoes, characterized flatly as potential Weapons of Mass Destruction by the U.S. Department of Transportation, continue to move through major U.S. cities, including all but one (NY City) of the seven DHS-designated High Threat Target Cities, by rail and by highway. [1]

District officials say they do not know currently what truck hazmats cargoes move through the city. CSXT has provided the District with a list of their ultrahazardous rail cargoes, a closely held set of competitive information. Rail officials and government regulators have suggested that we should assume "business as usual" – a similar list of hazardous cargoes as the DC LECP received some time ago, from toxic gases to

flammables, explosives, and military munitions. Our committee was unsuccessful at that time in getting worst case scenario information from the railroads.

CSXT officials say they most often ship their most dangerous cargoes through the District at night, in order to avoid congestion problems with competing commuter rail operations (MARC and VRE). The night shipments may be safer for the portion of the federal workforce that has dispersed to the suburbs, but are arguably less safe for District residents, because dense toxic gas clouds tend to disperse more slowly at night and are thus more dangerous.

4. It seems probable that the daily imposing on District citizens of the unnecessary catastrophic risks of through shipments of hazardous materials is possible only by keeping the citizens in the dark. Several District and federal agency officials have in house some vivid 3-D computer programs, produced by military-funded federal agencies, that predict how toxic clouds from a chemical release can move through the federal enclave and other target areas. But District and federal officials refuse to show these “release scenarios” to any but a few fellow officials, so citizens and workers have no idea how vulnerable their city might be. The officials’ (quietly) stated rationales for withholding the vivid risk information: “We don’t want to scare people to death” and “We don’t want citizens second-guessing our emergency response orders.” Especially after the World Trade Center experience, this is a shaky basis for building trust in any local government’s competence to manage a significant emergency response situation.

Virtually no District officials who know the potential huge consequences of a successful attack will tell the public, perhaps because they despair of doing something significant to reduce the risks of terrorist attacks on such easily available targets and in a city poorly prepared to respond. Many city officials seem concerned to protect a local tourist industry at the expense of candid assessments, shared with citizens, of real terrorism risks and of glaring gaps in emergency preparedness in case of attacks.

Deliberately kept in the dark on the true risks, treated like panic-prone children, citizens have few bases upon which to push for urgently needed counter-terrorism and preparedness improvements, even when these could provide significant economic and personal protection at relatively low cost. Major private building owners and federal workforces close to rail and highway lines have not been shown vivid scenarios of serious chemical releases.

This corporation and government secrecy violates the most basic principle in American emergency planning since the 1984 Bhopal toxic gas disaster, which killed 6000 and injured 100,000 in one night: Tell people the worst case toxic gas and explosion release scenarios, and then they can bring an appropriate level of concern and resources to the problem.

5. This problem of bringing potential Weapons of Mass Destruction into the District, as several local officials concede, has not been taken seriously in the Nation's Capital. Some of the most important evidence of the continued vulnerability of the District:

- Federal hazmats experts looking out their office windows say that at least every other day a fully loaded, relatively thin-skinned gasoline tank truck moves up 14th Street NW, passing within two blocks of the White House (Fleet Transport Co. is one of the regular carriers, sometimes also delivering at night). A successful rifle, bazooka, or explosive device attack on this cargo would be designed to cause a spectacular fireball, damage to nearby buildings and death and injury to pedestrians and motorists. Even if no hijacker successfully diverted the truck closer to the White House, the world press headlines would no doubt read: "Terrorists Attack White House!" – a major media coup.
- The federal lead agencies (and the NFL) planning for at least one recent huge special event in DC reported they had held no discussions of and made no efforts to divert the most dangerous rail cargoes onto alternative routes. The September 4, 2003 "Kickoff" event sponsored by the National Football League/Defense Department/Pepsi and other corporate sponsors, with a huge concert featuring Britney Spears/Aerosmith/MaryJBlige planned to draw 300,000 spectators and 25,000 uniformed soldiers to the Mall (but it rained), erected its main stage a few blocks from the major CSXT rail line and the Interstate-695 freeway route. As late as 11 AM that day, the lead agency U.S. Park Police had not contacted CSXT to ask for a temporary moratorium of dangerous shipments. Reportedly, even when prompted, they did not contact CSXT.
- The economic implications of a successful terrorist attack using a toxic gas tank car to cause mega-deaths or an explosives cargo to destroy a vital U.S. freight bottleneck route (for example, the railroad Long Bridge over the Potomac in DC) are obviously vast, both for commercial infrastructure and for tourism. Both industries obviously would benefit from real risk reduction efforts, such as mandatory rational routing and storage of the most dangerous cargoes away from dense populations in to reduce the risks of such attacks. [2] Surely just one successful terrorist attack using an unnecessary through shipment of ultrahazardous cargoes could deal a huge and long-lasting blow to the District's tourism industry and to the local government's credibility regarding homeland security measures.

But shortsighted protection of the tourism industry seems to trump public safety considerations, and certainly hinders a candid assessment of glaring District security gaps. Local District security agency officials go on TV before major tourism weekends with a PR message: "DC is a safe place." The translation seems to be: "Bring in your tourism dollars." And a Washington Post editorial recklessly headlined "It's OK, Bring

the Kids” (6/6/03) chastised fearful Anne Arundel County school officials who canceled their student trips to DC. The Post editors said: Yes, DC will be an “uncertain environment...[with] potentially dangerous circumstances...for many years,” but “no extraordinary threat.”

- The District shows little awareness that, although it has almost no chemical industry facilities, it is a major convergence point for through freight traffic in the East, both truck and rail. [See map, attached] The rail lines bring toxic cargoes right through downtown, close to the most visible terrorist targets such as the Capitol, right next to the Congressional and the main federal agency offices, sometimes elevated and sometimes in the Virginia Street Tunnel, crossing the Potomac parallel to the 14th Street bridge after rumbling through Anacostia and crossing the Anacostia in two places. The Southeast-Southwest Freeway truck route, a (non-rush-hour) shortcut through the city parallel to the rail line, even has red-circle “HC” signs erected by District officials indicating – to the astonishment of many – that it is an approved hazardous cargo route.
6. Alternative rail and highway routes are available. A glance at a consultant’s railroad map of East Coast alternatives [attached] shows that a chemical manufacturing facility in Georgia, for example, shipping chlorine gas to a user facility in New Jersey, has two main choices for its rail carrier. When the chemical company hires CSXT railroad, CSXT’s line carries the massive railcars of poison gas through Alexandria, Arlington, right through the main federal presence in Washington, DC, through miles of Anacostia, and then through the mile-long Howard Street rail tunnel under Baltimore, then Wilmington, Philadelphia, etc. in the densely-populated Eastern Urban Corridor. If, on the other hand, the shipper hires Norfolk Southern as the carrier, the most likely NS rail line swings out fifty miles west of DC, through such non-target cities as Elkton WV, Luray VA, Hagerstown MD and Reading PA. Currently no level of government requires that a rational, anti-terrorism routing choice, which effectively eliminates the terrorist threat, be made in such cases.

Public officials are not insisting that preventive counter-terrorism criteria drive freight route and schedule decisions. Railroad officials explain privately that they are doing much to beef up security, but they cannot talk about it. The Association of American Railroads post- 9/11 did a big risk study of the vulnerability of its most dangerous rail cargoes to terrorism – that study is not public. The rail industry told GAO “that [they] without government assistance lack the resources to counter a significant terrorist attack.” Individual railroads admit they have not overhauled the basic way they operate, and cannot imagine any way for one railroad to voluntarily hand over their most dangerous (and lucrative) chemical cargoes to their main competitor simply in order to use routes avoiding attractive target cities.

7. How can we evaluate the preparedness of the Nation's Capital for a serious, terrorist-caused chemical release? The District's Emergency Management Agency recently got an Emergency Management Accreditation Program award, but that is about the capabilities of District agencies, not the capabilities of the city to respond effectively to (much less prevent) a serious chemical release.

U.S. GAO recently reported on Rail Safety and Security (4/30/03): "While no standardized tool exists to gauge local preparedness, officials from nine of the ten cities that GAO visited said that they are generally prepared to respond to hazardous materials incidents." But GAO concludes that without standards, and without adequate information, it is impossible to assess the railroads' terrorism preparedness.

A similar lack of agreed-upon national standards exists regarding the capabilities of a community to deal with a serious hazardous release. For comparison, we should look at the hazmat release community preparedness capabilities insisted on (and funded) by the U.S. Army (with GAO oversight) in the eight Chemical Stockpile Emergency Preparedness Program communities where nerve gas is being incinerated.

As a premier High Threat Target City, the District should have a model program. The key question must be: What can this community reliably do, if a serious, terrorist-caused toxic release occurs? And what harm can it prevent?

The District lacks many of the "reliable, functioning capabilities" critically needed in any community that takes seriously the threat of a significant hazardous chemical release:

- ◆ A system for timely detection of a serious chemical release
- ◆ An outdoor alert system – the District's \$1 million Civil Defense siren system was dismantled years ago
- ◆ An indoor alert system – the local Emergency Alert System is voluntary, and reportedly unreliable
- ◆ A reliable 9-11 system – in one year, the District's system reportedly left unanswered 190,000 calls, one-quarter of the total calls made
- ◆ A functioning hazmat response team – 12 of 14 members recently flunked a competency exam and were kicked off the team. Political forces have seemingly even managed to block DC's development of a fully-capable ("heavy") National Guard Civil Support Team, which in other U.S. cities are trained and available to assist local officials in case of hazardous releases.
- ◆ A reliable and tested evacuation system
- ◆ Vigorous public education on Shelter in Place and other protective actions

8. The District need not feel helpless in facing the risks from through hazmats cargoes which provide attractive targets for terrorists. New York City -- alone of the top seven target cities -- has had a long-standing Fire Prevention Code ban (in Chapter 40) on the transportation of three of the most dangerous classes of truck hazmats (bulk gases, compressed gases and toxic-by-inhalation gases) through the city. New York City requires a permit, and will not grant it where alternative routes are available. As far back in 1982 this ban was challenged by the trucking industry in a lawsuit, but was decisively upheld by the Second Circuit Court of Appeals and has not been challenged since:

“New York City truck regs, requiring bulk gases to be transported around City unless no practical alternative route exists and the fire commission authorizes trip, promote safety, do not cause ‘unnecessary delay’ ... and thus are not preempted.” *City of New York v. Ritter Transp., Inc.*, 515 F. Supp. 663 (S.D. N.Y. 1981), *aff’d*, *National Tank Truck Carriers, Inc. v. City of New York*, 677 F.2d 270 (2d Cir. 1982)

9. It is thus clearly legal, on safety grounds alone, for a densely-populated city to protect itself against unnecessary, through shipments of the most dangerous truck cargoes. The case of city bans on unnecessary, through hazmats shipments by rail has not been similarly thrashed out in courts, but the recent Ninth Circuit “Dunsmuir toxic release” decisions in California outline the basic legal principles that would be involved in promulgating legal, non-federal regulation on safety grounds alone. As in the District’s case, credible terrorism risks offer even more plausible grounds for re-routing the most dangerous cargoes.

In the counter-terrorism context, legislators in some cities, including the District, may want to consider new legislation similar to that in the New York City Fire Code, but also covering rail cargoes. Since on safety grounds the federal government has not regulated specifically on the routing of dangerous cargoes (with the exception of high-level nuclear waste, by truck only, in HM-164), cities and states are free to do so. [3]

Re-routing cargoes around highly attractive target cities or national icons is not a simple “shifting of risks” to other jurisdictions. Mandating rail and/or highway routes that go around high-threat areas and through non-target areas significantly reduces, perhaps to zero, the attractiveness of those hazmats cargoes for terrorist purposes. The Pentagon, for example, is re-routing all Route 110 traffic in Arlington to remove any possibility of using that route for a new and close-in terrorist attack. Similarly, terrorists are not likely to risk their lives to attack a rail tank car which has been re-routed from the District to go through Luray VA. In three recent Olympics in L.A., Atlanta, and Salt Lake City, officials asked railroads and truckers to avoid crowded stadiums.

10. A final word: creative and proactive re-routing of the most dangerous through shipments of the most dangerous cargoes seems urgent, for several reasons. There have been high-level, serious discussions over eighteen months in various federal agencies on

the security issues around placarding. There is a significant possibility that soon the US DHS may promulgate regulations to eliminate some of the placards from hazmats vehicles. A counter-terrorism steering group at US DOT has previously opposed this, underlining the critical need that emergency responders have for the placards. But some federal officials are reportedly now saying, “If you only knew what we know about the terrorists’ intentions to use hazardous cargoes as weapons, you would support the elimination of the placards.”

The Fire Service has vigorously opposed such a move, and the U.S. DOT has published an excellent report (“The Role of Hazardous Material Placards in Transportation Safety and Security”, June 15, 2003) outlining why taking placards off the vehicles would be counter-productive and risky. DOT concluded that “Enhancing security through alternative means [operational procedures and technological developments] is more appropriate than replacing placards.” See the report at http://hazmat.dot.gov/hmt_security.htm

Real reduction of terrorism risk, by local and state officials representing citizens at risk, rather than a useless new form of federally-mandated secrecy that endangers emergency responders and citizens, is a critical way we can exercise our democratic strengths and defeat terrorism both immediately and in the long term.

Attachments:

Chlorine tank car photo
Accident photos
DC map - rail routes
Map of alternative routes
Millar op-ed in Post

NOTES

[1] Knowledgeable hazmats experts, for example in the railroads, concede that it is not unreasonable to characterize their shipments through cities as “weapons of mass destruction”. Railroads and trucking companies are bringing, often unnecessarily, interstate through shipments which if released by terrorist attack could cause hundreds or thousands of deaths: poison gases, explosives, liquified petroleum gases. US DOT regulators recently characterized these cargoes as potential Weapons of Mass Destruction (RSPA Docket HM-232 on Security Plans for shippers and carriers, final rule March 25, 2003).

The Chlorine Institute, for example, has for years published for emergency responders its indispensable Pamphlet 74, which shows that just one standard 90-ton chlorine gas rail car, if punctured, can release a toxic gas cloud 41 ½ miles long over a city. The former top U.S. DOT hazmats regulatory official has said publicly that just one ammonia tank truck, if released in an urban area, can cause a Bhopal-scale toxic gas disaster: 6000 dead, and 100,000 seriously injured.

Given that industry and government have for decades been providing detailed information on the “worst case release scenarios” involving explosions, fires and toxic gas clouds, we must assume that terrorists are fully aware of the most powerful cargo targets/weapons, can easily identify the characteristic shapes of the cargo tankers, and can readily gain access to the cargoes in many locations in the widely-open railyards and highways of the American transportation infrastructure. The American Association of Railroads, for example, has for years published its very useful “Field Guide to Tank Car Identification,” which has clear diagrams, instructions on how to find the tank car labels, and cutaways of how the tankcar valves work. Worst case toxic cloud and explosion release scenarios from many typical railcars and trucks, although taken down post- 9/11 from the Internet by U.S. EPA, have been publicly available in federal reading rooms for a decade, for those who know to look for them.

Even the California Highway Patrol, which has long designated truck routes for hazardous and radioactive shipments, has so far not acted to protect major target cities such as Los Angeles and San Francisco/Oakland by mandating the re-routing of through shipments.

[2] Federal agencies have recently had consultants provide cost estimates for potential successful bioterrorism attacks in major U.S. cities and ports. While not directly comparable to the impacts of a potential attack using an ultrahazardous cargo, the bioterrorism attacks indicate the types of costs that could be anticipated:

In its report, "The Economic Impacts of Bioterrorist Attacks on Freight Transport Systems in an Age of Seaport Vulnerability," the DOT's Volpe National Transportation Center estimates that a major release of a biological agent such as smallpox or plague in a crowded transportation terminal under current conditions could kill from 30,000 to 3 million people. The economic aspect of such an attack could amount to \$90 billion to \$9 trillion in the value of lives lost; \$1 billion to \$10 billion in direct property damage; \$20 billion to \$200 billion in trade disruption; and \$42 billion to \$420 billion in indirect costs. Such losses can be projected based on evaluations of the economic damage caused by the Sept. 11, 2001, terrorist attack of the World Trade Center in New York City. The U.S. government's response to those events -- to blockade its own seaports and airports for a week -- may have incurred losses as great as the estimated \$50 billion World Trade Center direct costs themselves, the report said.

"Airlines and airfreight companies lost billions of dollars," the DOT study added.

"Container shipping fared worse, losing a billion dollars a day during months spent disentangling freight traffic.

[3] The federal regulatory agencies are missing in action, not up to speed in a terrorism context. US DOT's longstanding regulations, such as on container design and route choices by shippers have been based pre-9/11 on acceptable accident history (not on terrorism calculations as we now must do). For example, some ultrahazardous cargoes are not allowed to be shipped in bulk, or only with strict US DOT oversight (e.g., rocket

fuel, or N₂O₄). Some shippers voluntarily use higher visibility as a safety measure: e.g., Hydrogen Cyanide is shipped in bright white and red “candy-striped” rail cars.

DOT’s 49 CFR 397.61 says no hazmat trucks should go through cities, but has very weak language: “...unless impracticable to avoid” cities. And it is virtually unenforced in DC-Baltimore area, according to the Federal Motor Carrier Safety Administration regional official.

The brand-new Transportation Security Administration (in US DHS) “...has not yet developed specific plans to address the security of individual surface transportation routes, including rail. Such a [risk-based] plan is necessary to determine the adequacy of security measures already in place and identify security gaps.”

According to U. S. GAO’s April 2003 report [GAO-03-435], the adequacy of voluntary industry activities to assure even basic truck and rail hazmats security is in doubt. The new Transportation Security Agency within DHS has ample authority to regulate. Focused massively on aviation and port security, however, TSA has not developed the specific risk-based plans for highway and rail shipments that would enable one to assess security measures and identify gaps, says GAO. And on terrorism/security grounds, the US DOT explicitly declined to regulate specifically on hazmats routing as a mandatory part of the new Security Plan regulations (HM-232), so states and cities are free to do so on security grounds as well. No court cases have yet tested the scope of what cities and states can do in protective hazardous materials regulation on security grounds. The courts, as in the New York City case, may very well look favorably on protective action even if there is a minor burden on interstate commerce.

But DOT’s proposed regulations were said to be “extremely general...too vague to be enforced.” [Chlorine Institute. comments]

The rest of the Bush Administration has also unsurprisingly already declined its opportunity to regulate to reduce risks of through hazmats shipments in target cities. U.S. DOT in a timid final rule on security in March 2003 told the hazmats shippers and carriers they would remain virtually self-regulated: they should do their own risk assessments and formulate their own security plans, for which DOT would not specify standards or contents and would not take possession of for evaluation. And because of industry opposition, in the final rule the apparently inflammatory word “routing” (as a potential way to reduce terrorism risks) was dropped out and did appear even once. The DOT’s Federal Railroad Administration issued a June 2003 “notice” concluding that any new security regulation of explosives cargoes was unnecessary.